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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,528	06/14/2000	Kent A. Louviere	298.006	7692

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EXAMINER

STAICOVICI, STEFAN

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/594,528

Applicant(s)

LOUVIERE, KENT A.

Examiner

Stefan Staicovici

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6, 8-19 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed July 10, 2003 (Paper No. 10) has been entered. Claims 1, 3 and 9 have been amended. No claims have been canceled. Claims 1, 3-6, 8-19 are pending in the instant application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright *et al.* (US Patent No. 5,736,173) in view of Beck *et al.* (US Patent No. 5,040,963) and in further view of Porfano *et al.* (US Patent No. 6,164,044), McGahhey (US Patent No. 6,336,489) and JP 11-100008.

Wright *et al.* ('173) teach the basic claimed process of injection molding a container with an open end and a closed end, including a mold (10), said mold (10) having a first member (40, 34) including a female mold (14) (insert), neck ring (16), slide taper blocks (38a, 38b) and slides (36a, 36b). Further, Wright *et al.* ('173) teach a second member having a core (12) and a sleeve (30) that abuts against slides (36a, 36b) in order to further position neck ring (16), hence forming mold cavity (18) therebetween. As shown in Figure 1 the outer surface (36c) of each slide

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includes an inclined portion (36d), which permits motion of the sliders between an extended position and a contracted position. The injection molding process of Wright *et al.* ('173) includes heating plastic material to form a stream of molten plastic material, positioning core (12) to form mold cavity (18) by contacting sleeve (30) against slides (36a, 36b), slider taper blocks (38a, 38b) and neck ring (16) in order to further position neck ring (16), hence forming mold cavity (18) therebetween, injecting molten plastic into mold cavity (18) through nozzle (20), in order to form a tubular product having an open end and a closed end (container).

Regarding claim 1, Wright *et al.* ('173) do not teach a plurality of cores and a manifold member attached to first member. Beck *et al.* ('963) teach an injection molding apparatus having a manifold for injection molding a plurality of containers. As seen in Figure 1 of Beck *et al.* ('963) a manifold system for a multicavity molding system includes a plurality of molding cavities (3), a plurality of cores (5) and a plurality of hot runners (33,35, 37) The molten material is channeled and injected into manifold (19) via valves (21,23) and hot runners (33, 35, 37). Heating means (39) is provided to maintain and control the temperature of the molten material as it is distributed through the hot runners of the manifold system. It would have been obvious for one of ordinary skill in the art at the time of the invention to use a plurality of molding cavities and cores, and the manifold system of Beck *et al.* ('963) in the process of Wright *et al.* ('173) in order to increase productivity by increasing the number of components manufactured in one production cycle and to improve process control by maintaining the temperature of the molten material at a constant temperature, hence avoiding short shots.

Further regarding claims 1 and 4, Wright *et al.* ('173) in view of Beck *et al.* ('963) do not teach a process for sealing said molded containers (vials). Porfano *et al.* ('044) teach a process for assembling (measuring) and packaging a plurality of medical plastic vials (col. 4, lines 50-60) including, positioning said vials prior to packaging in a tray (84) (see Figure 5), filling (measuring) said vials with a liquid (medicine) and sealing said vials (see col. 10, lines 35-40) to form a container that encapsulates the poured liquid. Therefore, it would have been obvious for one of ordinary skill in the art to have filled said vials with a liquid as taught by Porfano *et al.* ('044) in the process of Wright *et al.* ('173) in view of Beck *et al.* ('963) because, Wright *et al.* ('173) in view of Beck *et al.* ('963) teach molding and ejecting a plurality of plastic containers whereas Porfano *et al.* ('044) teach a process for assembling and packaging a plurality of containers (col. 4, lines 50-60), hence providing use for the plurality of plastic containers of Wright *et al.* ('173) in view of Beck *et al.* ('963) by encapsulating the liquid.

Further regarding claims 1 and 3, McGahhey ('489) teach a method for sealing a plurality of vials including clamping said vials in a heater having a first arm and a second arm (32, 44), applying heat to seal said vials by measuring a heating time (see col. 1, lines 32-42), stopping the heating after a predetermined time has lapsed and unclamping said first arm and a second arm (32, 44) to remove said sealed vials (containers). Therefore, it would have been obvious for one of ordinary skill in the art to have sealed said plurality of vials including clamping said vials in a heater having a first arm and a second arm (32, 44), applying heat to seal said vials by measuring a heating time (see col. 1, lines 32-42), stopping the heating after a predetermined time has lapsed and unclamping said first arm and a second arm (32, 44) to remove said sealed vials

(containers) as taught by McGahhey ('489) in the process of Wright *et al.* ('173) in view of Beck *et al.* ('963) and in further view of Porfano *et al.* ('044) because, Porfano *et al.* ('044) specifically teach sealing of a plurality of vials, whereas Wright *et al.* ('173) in view of Beck *et al.* ('963) teach molding and ejecting a plurality of plastic containers, hence providing use for the plurality of plastic containers of Wright *et al.* ('173) in view of Beck *et al.* ('963) by encapsulating the liquid.

Further regarding claims 1 and 5, although McGahhey ('489) teaches measuring the heating time, McGahhey ('489) does not specifically teach measuring the temperature. JP 11-100008 teaches an impulse sealer that measures the sealing temperature and stops the process after the optimum temperature has been reached (see Abstract). Therefore, it would have been obvious for one of ordinary skill in the art to have measured the sealing temperature and stopped the process after the optimum temperature had been reached as taught by JP 11-100008 in the process of Wright *et al.* ('173) in view of Beck *et al.* ('963) and in further view of Porfano *et al.* ('044) and McGahhey ('489) because, Porfano *et al.* ('044) specifically teach sealing of a plurality of vials, whereas Wright *et al.* ('173) in view of Beck *et al.* ('963) teach molding and ejecting a plurality of plastic containers and also because, JP 11-100008 specifically teaches that temperature control provides for improved process control and hence an improved product.

Allowable Subject Matter

4. Claims 6 and 8-19 have been allowed.

Response to Arguments

5. Applicant's arguments filed July 10, 2003 (Paper No. 10) have been considered.

In response to applicant's arguments drawn to the individual teachings of Wright *et al.* ('173) and Beck *et al.* ('963) (see pages 9-10 of the amendment filed July 10, 2003), it is noted that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that "both the Beck '963 and the Wright '173 patents specifically relate to 'preform' injection molds" and as such, the "article of '963 and '173 could not be used to encapsulate [a] vial containing a liquid as taught by Applicant" because "the preformed article undergoes further blow-molding in order to shape the article to the desired configuration for consumer use" (see page 10 of the amendment filed July 10, 2003). However, it should be noted that under MPEP §2111.03, the "transitional term 'comprising', which is synonymous with 'including,' 'containing,' or 'characterized by,' is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. Genentech, Inc. v. Chiron Corp., 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997). Further, under MPEP §2123, a "reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.). Therefore, it is submitted that the teachings of Wright *et al.* ('173) and Beck *et al.* ('963) as a whole would have reasonably suggested to one having ordinary skill the art to have filled said vials with a liquid as taught by Porfano *et al.* ('044) in the process of

Wright *et al.* ('173) in view of Beck *et al.* ('963) because, Wright *et al.* ('173) in view of Beck *et al.* ('963) teach molding and ejecting a plurality of plastic containers whereas Porfano *et al.* ('044) teach a process for assembling and packaging a plurality of containers (col. 4, lines 50-60), hence providing use for the plurality of plastic containers of Wright *et al.* ('173) in view of Beck *et al.* ('963) by encapsulating the liquid.

Applicant argues that “the performs taught by the prior art require a separate cap...that must be either be manufactured and/or molded” because of the use of a “neck ring” (see pages 9-10 of the amendment filed July 10, 2003). In response, it should be noted that under MPEP § 2123, the “use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain.” In re Heck, 699 F.2d 1331, 216 USPQ 1038, 1039 (Fed. Cir. 1983). Further, it should be noted that Wright *et al.* ('173) specifically teach that the purpose of the neck ring “allows for the formation of larger diameter preform moulded articles in the preform injection mould” and as such, existing “preform injection moulds can be retrofitted to incorporate the assembly allowing an existing preform injection mould to form larger preform moulded articles without requiring a new preform injection mould to be purchased” (see col. 3, lines 42-55). Therefore, it is submitted that it would have been obvious for one of ordinary skill in the art to have sealed said plurality of vials including clamping said vials in a heater having a first arm and a second arm (32, 44), applying heat to seal said vials by measuring a heating time (see col. 1, lines 32-42), stopping the heating after a predetermined time has lapsed and unclasping said first arm and a second arm (32, 44) to remove said sealed vials (containers) as

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taught by McGahhey ('489) in the process of Wright *et al.* ('173) in view of Beck *et al.* ('963) and in further view of Porfano *et al.* ('044) because, Porfano *et al.* ('044) specifically teach sealing of a plurality of vials, whereas Wright *et al.* ('173) in view of Beck *et al.* ('963) teach molding and ejecting a plurality of plastic containers, hence providing use for the plurality of plastic containers of Wright *et al.* ('173) in view of Beck *et al.* ('963) by encapsulating the liquid.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Staicovici, Ph.D. whose telephone number is (703) 305-

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0396. The examiner can normally be reached on Monday-Friday 8:00 AM to 5:30 PM and alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni, can be reached at (703) 305-5493. The fax phone number for this Group is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Stefan Staicovici, PhD



Primary Examiner

9/21/03

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September 21, 2003